

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI (ST. LOUIS)**

RADHA GEISMANN, M.D., P.C.,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:14-cv-00472-CDP
)	
ZOCDOC, INC.,)	
)	
Defendant.)	

COMBINED MOTION TO TRANSFER, DISMISS, OR STAY

Pursuant to 28 U.S.C. § 1404(a) and Federal Rule of Civil Procedure 12(b)(6), defendant ZocDoc, Inc. (“ZocDoc”), by and through its undersigned counsel, files this combined motion to transfer, dismiss, or stay. The Class Action Petition (“Complaint”) filed by plaintiff Radha Geismann, M.D., P.C. (“Geismann”), should be transferred to the United States District Court for the Southern District of New York for convenience and in the interests of justice because that is where ZocDoc’s operations, witnesses, and relevant documents and data are. If the Court transfers the case, it need not consider the remainder of the issues raised in this motion. But alternatively, if the Court retains jurisdiction, the Complaint should be dismissed because (1) Geismann’s claims were mooted by ZocDoc’s offer of judgment, (2) Geismann has failed to state a claim for violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, to the extent the Complaint alleges an inadequate opt-out notice, (3) Geismann has failed to state a claim for conversion, and (4) Geismann has failed to state a claim for violation of the Missouri Consumer Fraud and Deceptive Business Practices Act, Mo. Rev. Stat. § 407.010, *et seq.* Even if the case remains in this Court and is not dismissed, it should be stayed pending

resolution of critical and relevant petitions before the Federal Communications Commission.

WHEREFORE, for the foregoing reasons, as set forth more fully in the accompanying memorandum of law, ZocDoc requests that the Court enter an Order transferring this case to the Southern District of New York, dismissing this case in its entirety, with prejudice, or staying this litigation.

Dated: April 18, 2014

Respectfully submitted,

LATHROP & GAGE LLP

/s/ Blaine C. Kimrey

Blaine C. Kimrey (#50074)
bkimrey@lathropgage.com
155 N. Wacker Drive, Suite 3050
Chicago, IL 60606
Telephone: (312) 920-3300
Facsimile: (312) 920-3301

Matthew Jacober (#51585)
mjacob@lathropgage.com
Pierre Laclede Center
7701 Forsyth Blvd., Suite 500
Clayton, MO 63105
Telephone: (314) 613-2800
Facsimile: (314) 613-2801

Attorneys for defendant ZocDoc, Inc.

CERTIFICATE OF SERVICE

I, Blaine C. Kimrey, hereby certify that on this 18th day of April, 2014, a true and correct copy of the foregoing was served by CM/ECF to the parties registered with the Court's CM/ECF system.

/s/ Blaine C. Kimrey